

ROMANIA

TRADE SUMMARY

The United States registered a trade deficit of \$237 million with Romania in 2000, a decline of \$20 million from 1999. Romania was the United States' 84th largest export market in 2000. In 2000, U.S. exports to Romania were \$233 million, a 31.6 percent increase from 1999. U.S. imports from Romania were \$470 million in 2000, an increase of \$35 million, 8.2 percent, from 1999. The stock of U.S. foreign direct investment in 1999 was \$48 million, a 61.9 percent decrease from 1998.

IMPORT POLICIES

Tariffs

Romania's trade policies are shaped primarily by its World Trade Organization (WTO) commitments and by its efforts to join the European Union (EU). Romania has concluded a preferential trade agreement with the EU (Europe Agreement), and free trade agreements with the European Free Trade Area (EFTA) countries, as well as its Central European neighbors (CEFTA). Romania maintains generally high most-favored-nation (MFN) rates for agricultural products (average rate of 98.6 percent) and non-agricultural products (average rate of 34.4 percent), based on 1999 data. It did, however, frequently use much lower applied rates, reducing the average rates to 33.9 percent in the case of agricultural products and 16.2 percent in the case of non-agricultural products.

Romania acceded to the WTO's Information Technology Agreement and so eliminated tariffs on those products covered by the agreement effective January 1, 2000. High MFN rates on distilled spirits (90 percent ad valorem within a modest quota and 247.5 percent outside the quota), wine (144 percent), durum wheat (242 percent bound rate), and textiles (12-32 percent) have severely limited U.S. products' access to the Romanian market. In 2001, Romania lifted the import surcharge it had imposed in 1998.

Pursuant to its Europe Agreement, Romania is phasing out tariffs on products originating within the EU while U.S.-origin exports face frequently high MFN duties. Various exporters of U.S.-origin products have voiced concerns about these tariff differentials vis-a-vis EU-origin products; their products include durum wheat, distilled spirits, animal feed supplements, wine, rubber tires, upholstery, lightning arresters, switching gear for telephone lines, as well as washers and dryers for laundromats. In 2000, Romania and the EU reached agreement on further trade liberalization in agricultural products. The so-called "zero-for-zero agreement" will end EU agricultural subsidies on goods exported to Romania in return for the elimination of Romania's tariffs on most EU agricultural products. Under this arrangement, each party will have greater access to each other's market for agricultural commodities. As a result, U.S. agricultural products will be put at a further disadvantage vis-a-vis EU products. When Romania does join the EU, which will take many years at a minimum, it will have to adopt the EU's common external tariff (CET) rates, which are currently significantly below Romania's applied rates. The United States has been consulting with Romania

about the tariff differential problem and encouraging it to reduce its applied rates down to the EU's CXT rates with respect to key products and sectors.

Non-tariffs

In 2001, the new Romanian Government restored the small and medium enterprises (SME) facilities and incentives that had been repealed by the previous government in 2000. The main restored facilities are: import duty and VAT-free regimes for machines, equipment, know-how and technologies imported for the development of SME activity. The new Romanian Government also restored the practice of granting priority to the SMEs in the government procurement of goods and services, the elimination of the tax on reinvested profits, and the duty-free regime for the imports of raw materials for SMEs.

Romania has been required to implement the WTO Agreement on Customs Valuation in 1995, but current Romanian practices appear to violate those obligations. The Romanian Customs Service has used customs valuation procedures that have significantly impeded the access to the market for U.S. exporters. Instead of accepting the valuation in the import documents, the Romanian authorities created a database of reference prices, which are much higher than market prices. This system violates the WTO Agreement on Customs Valuation. After almost two years of trying to solve the matter informally, the U.S. commenced a WTO Dispute Settlement case in May 2000. At consultations last July, a satisfactory solution was discussed - but has not yet been agreed upon - in which Romania would cease using its database system and instead would adopt a risk-based approach to addressing fraud.

Romania's 1997 Customs Code established minimum and maximum prices for imported meat, poultry, eggs, rice, sugar, fruits and vegetables, clothing, and footwear. It also established minimum and maximum reference prices for distilled spirits. Romania instituted specific procedures for investigating import prices when the c.i.f. value falls below the minimum import price. In such situations, the importer is required to pay, in addition to the duty based on the c.i.f. value, a "guarantee" deposit that is the difference between the duties of the maximum established price and that of the c.i.f. value. This "guarantee" allows for the release of the goods while customs officials verify the accuracy of the c.i.f. value within the allotted thirty days. However, U.S. firms report that the "guarantees" are reimbursed much later or not at all, even after investigations were successfully concluded in favor of the importers.

In addition, the verification procedures utilized by Romanian customs officials include several unnecessary requirements, a concern to U.S. businesses. For instance, to verify the actual c.i.f. value of a specific transaction, the Romanian "surveillance and control brigade" will make on-site inspections at the importer headquarters and warehouses where merchandise is stored. They check "all the import-export operations made within [the] last five years."

In November 2000, the Romanian Government granted an exception for U.S. and EU poultry which has been included in the minimum reference price system. The Customs Office instructed local customs offices on November 15, 2000 to clear U.S. poultry

shipments using the invoice value beginning December 15, 2000.

U.S. exports to Romania are hampered by the Pan-European Cumulation system, particularly the removal of the availability of customs duty drawback on products originating in the U.S. and other non-participants in the "cumulation system." Under this recently introduced system, customs duties on U.S.-origin inputs used in the production of goods subsequently exported under preferential trade agreements involving the EU, Romania and other countries are no longer refunded. In addition, under the pan-European cumulation system, content from any participant in the system can accumulate to qualify for preferential treatment under Romania's Europe Agreement, even though other participants in the "cumulation system" are not party to this agreement.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Romania has sought to bring its standards in line with international and EU standards. Romanian standards of quality and safety are under the jurisdiction of the Romanian Standards Institute. Nearly 90 percent of all new standards match ISO or EU standards. Romania adopted, for instance, international quality control standards such as ISO 8402, 9000-9004 and 9004-2 and incorporated them in its national standardization system.

Although the ISO standards are not compulsory by law for individual companies, the buyers increasingly impose them on the suppliers to prove the quality of their products and services by the certification of the quality control system they practice. Generally speaking, U.S. quality standards requirements are superior to local ones. However, Western European countries are acting aggressively to adapt local technical standards of their own and this might in time discriminate against U.S. products. According to Romanian Decree No. 21/1992, an Office for Consumer Protection has been created. This office supervises product quality compliance with compulsory standards referring to life, health, work security and environmental protection.

In February 2001, the EU announced that it had concluded Protocols to the Europe Agreement on Conformity Assessment and Acceptance of Industrial Products ("PECA") with Hungary and the Czech Republic and would soon begin negotiations with Romania and other EU candidate countries. Under the PECA, the EU and the EU candidate country agree to recognize the results of one another's designated conformity assessment bodies/notified bodies, thereby eliminating the need for further product testing of EU products upon importation into the candidate country. It appears that among the products being exported to the candidate countries, only those which are of EU country origin and certified by an EU notified body with the "CE" mark illustrating compliance with EU standards, will benefit from the provisions of the PECA, thereby eliminating the need for further product testing. Because of the EU origin requirement, it appears that products originating in the United States would not benefit from the PECA even if they have been tested, certified and bear the "CE" mark. The U.S. will monitor closely how the PECAs are implemented and also has begun consultations with the candidate countries and the EU on this issue in multilateral and bilateral settings.

The EU prohibits the use of anti-microbial treatments in poultry production. Adoption of this policy by Romania would jeopardize U.S. poultry exports, which exceeded \$5 million a year from 1997 through 1999. The EU published an opinion in 1998 on anti-microbial treatments, which recommends that anti-microbial treatment should only be used as part of an overall strategy for pathogen control throughout the whole production chain. Although some forms of treatment such as tri-sodium phosphate (TSP) and lactic acid were deemed more acceptable, the use of chlorinated water, the primary means employed in the United States to assure safety of poultry products from microbial contamination, was rejected by the study.

GOVERNMENT PROCUREMENT

Romania has expressed its intention to join the WTO Government Procurement Agreement (GPA). Romania already is an observer to the GPA, and it would have to accede to the GPA when it joins the EU.

Further, Romania has supported discussions in Geneva regarding transparency in government procurement. Romania's government procurement law covers purchases by state-owned enterprises and central government bodies (Parliament, the Presidency, the government and ministries, institutions of higher learning, and the judiciary) of goods and services, and public investment, with the exception of the procurement of armaments or public works by the Ministry of Defense. State-owned companies with the status of commercial companies have their own internal purchasing policies that were based on commercial principles. Article 5 of Decree OG12/1993 establishes the two key conditions for the participation of foreign suppliers: (i) Romanian suppliers are granted similar treatment in the country of origin of the foreign supplier, and (ii) a Romanian supplier is either not available or cannot fulfill the conditions of the purchase.

EXPORT SUBSIDIES

Generally, Romania only provides export subsidies for certain agricultural products. The government has periodically used a tax incentive to stimulate domestic production for export. According to Article 7(1)(b) of Romanian Law 73/1996, a reduction of 50 percent on the profits tax applied to the portion corresponding to the share of exports of goods and services in total sales as of January 1, 1997. The government removed the measure on 30 January 1998, but the measure was reinstated by Parliament for 1999, and then suspended in March 1999.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Romania's criminal enforcement against copyright piracy and trademark counterfeiting (especially of U.S. distilled spirits) has been inadequate. Romania fails to provide its border and other authorities sufficient legal authority, resources and tools to combat the widespread piracy of copyrighted works. This inadequate enforcement against copyright piracy caused Romania to be placed on the Special 301 Watch List in 2000.

The rates of copyright piracy in Romania are high, though the authorities have made some improvements. Video piracy rate, which was once estimated at 100 percent, has decreased to approximately 60 percent due to increased police actions and the entry of

legitimate businesses into the market in 2000. Since the implementation of copyright law, the piracy rate for business software is estimated to have dropped from 95 percent to around 80 percent. Romanian criminal courts have concluded only 19 cases concerning copyright and related rights between the period from 1996 to 1999. Furthermore, the deterrent effect of fines appears to be eroding due to high inflation.

In October 2000, the Romanian Parliament finally adopted a law concerning the steps to be taken for observing the intellectual property rights within customs operations, a long-awaited positive measure for inhibiting the import of pirated goods in Romania. In November 2000, Romania's Parliament ratified the WIPO Treaty on Copyrights and the WIPO Treaty concerning Performances and Phonograms.

As required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Romania should enact legislation allowing searching without prior notification under specific circumstances, and should take appropriate measures to expedite prosecution of infringement cases and provide deterrent penalties to stem the level of piracy and counterfeiting. With respect to pharmaceuticals, Romanian law does not yet appear to provide protection for confidential test data as required by the TRIPS Agreement.

SERVICES BARRIERS

In accordance with its Europe Agreement with the EU, Romania was required to implement the EU broadcast directive that provides for European content quotas. However, Romania also included the "where practicable" provision of that directive, which gives the government flexibility in implementing this rule. Specifically, Law 119 of 1999, which amended the audio-visual Law 48/1992, provides: "TV stations must gradually broadcast, as much as possible, and by appropriate means, at least 51 percent of the total broadcast time to European productions, minus news and sport shows, games, advertising and teletext services." The subsequent condition is that out of the total, at least 40 percent must be Romanian made. However, making Romanian legislation compatible with EU requirements is regarded by Romanian parliamentarians as more a theoretical concept than a rule, as Romanian stations that comply with the requirement would dramatically lose market share and revenues.

The Ministry of Justice has submitted legislation to parliament requiring that foreign law firms be associated with Romanian ones. Foreign lawyers cannot provide legal advice on foreign or international law without being licensed in the practice of Romanian law.

Romania introduced a new banking law in 1998 that opened its banking sector to foreign investors as it implemented its commitments under the WTO Financial Services Agreement. Foreign insurance companies must establish a partnership venture with a Romanian partner to enter the Romanian market. Romania makes only minimal commitments for cross-border provision of insurance services. Administered insurance prices have tended to limit the interest of private companies in the Romanian market.

The government sold a strategic stake in the telephone company (Romtelecom) to Hellenic Telecommunications Organization in 1998. The privatization of Romtelecom is

supposed to be completed after the year 2000. Tariffs are subject to governmental supervision. Romania has made commitments under the WTO Basic Telecommunications Agreement - many of which will be phased-in in 2003 - and has adopted the pro-competitive regulatory principles contained in the WTO Reference Paper. Romania still needs to establish a transparent, non-discriminatory licensing system as specified in the WTO Reference Paper.

INVESTMENT BARRIERS

In November 2000, the previous government issued an emergency ordinance (number 229) for changing the Law 52/1994 concerning securities and stock exchanges. This ordinance granted for the first time in Romania rights to the minority shareholders, and has been currently under criticism by several major foreign direct investors in Romania grouped under the umbrella of the Foreign Investors Council. The new government in February 2001 canceled the emergency ordinance of the former government, and requested the new privatization agency (APAPS) and the national securities commission (CNVM) to draft a new ordinance.

A significant impediment to foreign investment is Romania's unpredictable legal and regulatory system. Tax laws change frequently and are unevenly enforced. Tort cases can require lengthy, expensive procedures and judges' rulings face uncertain enforcement.

Romania has requested additional time to implement the WTO Agreement on Trade Related Investment Measures (TRIMs). Developing countries were required to come into compliance with this Agreement by January 1, 2000. In regard to a single shipbuilding facility, Romania seeks an extension until May 27, 2003. For a motor vehicle facility a request was made for an extension until November 16, 2001. Both firms entered into agreements with the Romanian Government that include performance requirements that expire on those dates. Romania has amended the law under which these contracts have been agreed to in order to ensure that future arrangements will not contain provisions which violate the TRIMs Agreement. The United States is working with other WTO members to effect a case-by-case review of all such TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a WTO Member's rights under the WTO TRIMS Agreement.

ANTI-COMPETITIVE PRACTICES

The Romanian Government has not only taken no action against practices of state-owned and private firms that restrict the sale of U.S. products and services, but has even in some instances encouraged such practices. To boost the collection of some important debts from state-owned suppliers, the Ministry of Finance cut reschedule deals with state and private domestic debtors. In certain cases, this hidden subsidy has disadvantaged U.S. competitors. For instance, the Finance Ministry agreed to re-schedule in 1998 tax arrears amounting to about \$200 million with the domestic firm "European Drinks", an important domestic beverage manufacturer.

ELECTRONIC COMMERCE

The Romanian Government has signed the WIPO "Internet" treaties - the Copyright Treaty and the Performance and Phonograms Treaty and in November 2000 the Parliament ratified them. Nonetheless, as a result of millions of dollars worth of fraud on credit cards, many international electronic vendors no longer fill orders filed electronically from Romania.

OTHER SIGNIFICANT BARRIERS

Bribery and corruption are widespread throughout the Romanian economy and tax administration. This is believed to have stimulated the growth in the informal economy, which currently amounts to about half of the nominal Gross Domestic Product. Factors contributing to the growth of the informal economy are well-known: over-regulation and bureaucracy; inconsistent and changing legislation with immediate effect and subjective interpretation of law; and high taxation.